

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATION—NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION—

48 CFR Chapter 1 —

[FAR Case 94-721]—

RIN 9000-AG30—

**Federal Acquisition Regulation; Truth
in Negotiations Act and Related
Changes**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement those portions of Pub. L. 103-355 that make specific changes to the Truth in Negotiations Act (TINA) or that impact other areas of the FAR that affect contract pricing. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Comment Due Date:* Comments should be submitted on or before March 7, 1995 to be considered in the formulation of a final rule.

Public Meeting: A public meeting will be held on February 9, 1995, at 9:30 a.m.—

Oral/Written Statements: Views to be presented at the public meeting should be sent, in writing, to the FAR Secretariat, at the address given below, not later than February 6, 1995.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS),— 18th & F Streets, NW, Room 4037, Washington, DC 20405, Telephone: (202) 501-4755.

The public meeting will be held at: General Services Administration Auditorium, 18th & F Streets, NW, First Floor, —Washington, DC 20405.

Please cite FAR case 94-721 in all correspondence related to this case. —

FOR FURTHER INFORMATION CONTACT: Mr. Al Winston, Truth in Negotiations Act (TINA) Team Leader, at (703) 602-2119 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 94-721.

SUPPLEMENTARY INFORMATION:

A. Background —

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

Public Meeting—

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. The public is encouraged to furnish its views; the FAR Council anticipates that public comments will be very helpful in formulating final rules. —

A public meeting will be held on February 9, 1995, to enable the public to present its views on this rule. This rule will only be discussed at the public meeting session. Any subsequent public meetings will be devoted to other revisions to the FAR.—

Persons or organizations wishing to make presentations will be allowed 10 minutes each to present their views, provided they notify the FAR Secretariat at (202) 501-4755. Written statements for presentation should be submitted to the FAR Secretariat by February 6, 1995. Persons or organizations with similar positions are encouraged to select a common spokesperson for presentation of their views. This meeting, in conjunction with the **Federal Register** notice soliciting public comments on the rule, will be the only opportunity for the public to present its views.

FAR case 94-721

FAR case 94-721 implements Sections 1201 through 1210 and Sections 1251 and 1252 of the Act. Highlights include making TINA requirements for civilian agencies substantially the same as those for the Department of Defense (increasing the threshold for submission of "cost or pricing data" to \$500,000 and adding penalties for defective pricing). Provisions are also included that increase the threshold for cost or pricing data submission every 5 years beginning October 1, 1995. New exceptions are added to the requirement for the submission of "cost or pricing data" for

commercial items; approval levels for waivers are changed, and prohibitions are placed on acquiring "cost or pricing data" when an exception applies. The coverage includes a clear explanation of adequate price competition as required by the Act.

Also, FAR coverage has been included that addresses: (1) "Information other than cost or pricing data", (2) exemptions based on established catalog or market price, (3) inter-divisional transfers of commercial items at price, and (4) price competition when only one offer has been received.

The FAR language primarily modifies FAR Part 15, together with associated Part 52 clauses and Part 53 forms. However, some coverage is proposed to address contract clauses where threshold changes are made in Part 14 pertaining to sealed bid contracting, and in Part 31 where the cost principle on material costs has been amended to address inter-divisional transfers of commercial items at price. Additional miscellaneous changes in Parts 4, 12, 15, 16, 31, 33, 36, 45, 46, 49, and 53 have also been included.

Upon final implementation, the proposed FAR coverage will supersede the earlier FAR case 94-720 that was previously published as an interim rule in Federal Acquisition Circular (FAC) 90-22. FAR case 94-720 provided for an immediate increase to the threshold for "cost or pricing data" submission by contractors to civilian agencies to \$500,000. The Act provided that this requirement was effective on October 13, 1994, the date of enactment. FAC 90-22 (FAR case 94-720) also removed the certification requirement of commercial pricing for parts or components for contractors doing business with civilian agencies.

Policy for Determining Reasonableness of Price—

Two major changes are found in the proposed coverage. The first change shifts the policy of FAR Part 15 with respect to determining price reasonableness. A hierarchical policy preference for the types of information to be used in assessing reasonableness of price is established. The policy states that no additional information should be obtained from the contractor if there is adequate price competition. This is followed by allowing progressively more intrusive types of data requirements. Obtaining "cost or pricing data" is designated as the last choice. Use of "cost or pricing data" is coupled with a reminder that unnecessarily requiring that type of data is not desirable and can lead to additional

costs to both the government and the contractor.—

New FAR coverage, based on the Act, is presented that expands the exceptions based on adequate price competition and provides for special exceptions for commercial items. A new section addressing “information other than cost or pricing data” is created and a Standard Form 141X is provided for use by contractors. —

The proposed policy at FAR 15.804–1(b)(1)(ii), which recognizes circumstances when it can be determined that adequate price competition exists even though only one offeror has responded to the Government’s requirement, is under review within the executive branch of the Government to insure the policy is a permissible implementation of the Act.

Defining “Cost or Pricing Data”

The second major change accomplished by the proposed coverage is the clarification of the meaning of the term “cost or pricing data.” Currently, the FAR uses the term inconsistently. In some places, “certified cost or pricing data” is used and in other locations, it states “cost or pricing data.” In the proposed coverage, the term has been clarified in the definition to mean that, among other things, “cost or pricing data” is required to be certified in accordance with TINA and FAR 15.804–4, and means all facts that as of the date of agreement on price (or other mutually agreeable date) prudent buyers and sellers would reasonably expect to affect the price significantly.

To avoid possible confusion, the term “certified cost or pricing data” has also been defined as a subset of the more encompassing term “cost or pricing data.” The latter addition is designed to show that “certified cost or pricing data” is a subset of “cost or pricing data” and serves to distinguish between data for which a certificate has not yet been submitted and data for which a certificate has or should have been submitted. If circumstances change such that certification is not required, “cost or pricing data” reverts to “information other than cost or pricing data” and has the same postaward audit value that any other “information other than cost or pricing data” would have. However, “cost or pricing data” is always distinguishable from “information other than cost or pricing data” *before award* by its intended use. That is, “cost or pricing data” should not be requested unless the contracting officer believes it will be necessary to rely upon it to price the contract and that certification will be required or should have been

required in accordance with FAR 15.804–4. Only in the very limited circumstance where “cost or pricing data” is submitted but an exception is later found to apply would it revert to and become “information other than cost or pricing data” after award of the contract. Thus, the word “certified” need no longer be placed in front of “cost or pricing data” in every location it is used in the FAR in order for the term to have the full meaning provided for in TINA. Furthermore, now that the intent of the use of the data is clear, a bright-line distinction between “cost or pricing data” and all other types of information has been created.

“Information Other Than Cost or Pricing Data”

Since a bright-line test for “cost or pricing data” has now been established, it is also possible to craft a second category of data—“information other than cost or pricing data”—that may be required by the contracting officer in order to establish cost realism or price reasonableness. This information can include limited cost information, sales data or pricing information. The intent is also clear with respect to this category of information. Because it is not “cost or pricing data,” certification shall not be required and approval to obtain this information is vested in the contracting officer. The proposed FAR coverage gives a detailed discussion of “information other than cost or pricing data” at 15.804–5.

B. Regulatory Flexibility Act—

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed FAR revisions reduce the instances where it is necessary to request “cost or pricing data” from contractors. However, most contracts awarded to small entities are awarded on a competitive, fixed-price basis and do not require the submission of “cost or pricing data”. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94–721), in correspondence.

C. Paperwork Reduction Act—

The Paperwork Reduction Act, Pub. L. 96–511, is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a

request for approval of a new information collection requirement concerning TINA changes is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a **Federal Register** notice appearing in a future issue.

List of Subjects in 48 CFR Parts 4, 12, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53

Government procurement.

Dated: December 27, 1994.

Edward Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Chapter 1 be amended as set forth below:

1. The authority citation for 48 CFR Chapter 1 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM—

2. Section 1.105 is amended under the “FAR Segment” and “OMB Control Number” headings by removing “52.215–32” and “9000–0105”, and adding entries, in numerical order, to read as follows:

1.105 OMB Approval under the Paperwork Reduction Act.

* * * * *				
FAR segment				OMB control No.
* * * * *				
52.215–41–			9000–XXX
52.215–42–			9000–XXX
* * * * *				

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.803 is amended in paragraph (a)(17) by adding before the period at the end of the sentence “, or information other than cost or pricing data”, and paragraph (b)(4) is revised to read as follows:

4.803 Contents of contract files.

* * * * *

(b) * * *

(4) Cost or pricing data, Certificates of Current Cost or Pricing Data, or information other than cost or pricing data; cost or price analysis; and other documentation supporting contractual

actions executed by the contract administration office.

* * * * *

PART 12—CONTRACT DELIVERY OR PERFORMANCE

12.504 [Amended]

4. Section 12.504(d) is amended by adding "or other information" before the period at the end of the sentence.

PART 14—SEALED BIDDING—

5. Section 14.201-7 is amended in paragraphs (b)(1) and (c)(1) by removing "\$100,000, or for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, is expected to exceed \$500,000." and inserting "the threshold for submission of cost or pricing data at 15.804-2(a)(1)." in its place; by redesignating (d) as (e), and adding a new (d) to read as follows:

14.201-7 Contract clauses.

* * * * *

(d) Contracting officers shall, if requested by the prime contractor, modify contracts to change the threshold in the contract to the threshold for submission of cost or pricing data at 15.804-2(a)(1), without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of clauses 52.214-27, Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding, and 52.214-28, Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses.

* * * * *

14.214 [Removed]—

6. Section 14.214 is removed.

PART 15—CONTRACTING BY NEGOTIATION

7. Section 15.106-2 is revised to read as follows:

15.106-2 Audit—commercial items.

(a) This subsection implements 10 U.S.C. 2306a(d)(2) and (3) and 41 U.S.C. 254b(d)(2) and (3).

(b) The contracting officer shall, when contracting by negotiation, insert clause 52.215-XX, Audit-Commercial Items, in solicitations and contracts when submission of cost or pricing data may be required under 15.804-2 or exempted under 15.804-1(a)(2).

15.406-5 [Amended]—

8. Section 15.406-5(b) is amended by inserting the parenthetical "(See 15.804-6 and 15.804-8.)" at the end.—

9. Section 15.703(a)(2) is revised to read as follows:

15.703 Acquisitions requiring make-or-buy programs.—

(a) * * * —

(2) Qualifies for an exception from the requirement to submit cost or pricing data under 15.804-1; or

* * * * *

10. Section 15.801 is amended by revising the definition of "Cost or pricing data", and adding definitions in alphabetical order to read as follows:

15.801 Definitions.

Certified cost or pricing data is a subset of the term "cost or pricing data". The term "cost or pricing data" includes the requirement for certification. The term "certified cost or pricing data" may be used to specifically indicate "cost or pricing data" for which a certificate has been, or should have been, provided in accordance with 15.804-4.

* * * * *

Cost or pricing data means all facts that, as of the date of price agreement or, if applicable, another date agreed upon between the parties that is as close as possible to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect the price significantly. Cost or pricing data shall be certified in accordance with 15.804-4. Cost and pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as (a) vendor quotations; (b) nonrecurring costs; (c) information on changes in production methods and in production or purchasing volume; (d) data supporting projections of business prospects and objectives and related operations costs; (e) unit-cost trends such as those associated with labor efficiency; (f) make-or-buy decisions; (g) estimated resources to attain business goals; and (h) information on management decisions that could have a significant bearing on costs.

* * * * *

Information other than cost or pricing data means any type of information that

is not required to be certified in accordance with 15.804-4, that is necessary to determine price reasonableness or cost realism. For example, such information may include pricing information, sales information, or partial cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

* * * * *

Subcontract, for purposes of this subpart, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

* * * * *

11. Section 15.802 is revised to read as follows:

15.802 Policy.—

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary and shall generally use the following order of preference in determining the type of information required:—

(1) No further information from the offeror if the price is based on adequate price competition.

(2) Information other than cost or pricing data:

(i) Information related to prices (e.g., established catalog or market prices), relying first on information available within the Government, second on information obtained from sources other than the offeror and lastly on information obtained from the offeror.

(ii) Limited cost information, which does not meet the definition of cost or pricing data at 15.801.

(3) *Cost or pricing data*. The contracting officer should use every means available to ascertain a fair and reasonable price prior to requesting cost or pricing data. Contracting officers shall not unnecessarily require the submission of cost or pricing data because it leads to increased proposal preparation costs, generally extends acquisition lead-time, and wastes both contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor, or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

15.803 [Amended]

12. Section 15.803(a) is amended in the last sentence by inserting "or other information" after "pricing data".

15.804 Cost or pricing data and other information.

13. Section 15.804, heading, is revised to read as set forth above.—

14. Section 15.804-1 is revised to read as follows:

15.804-1 Prohibition on obtaining cost or pricing data.

(a) *Exceptions to cost or pricing data requirements.* The contracting officer shall not, pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, require submission of cost or pricing data (but may require other information to support a determination of price reasonableness or cost realism)—

(1) If the contracting officer determines that prices agreed upon are based on—

(i) Adequate price competition (see paragraph (b)(1) of this section);—

(ii) Established catalog or market prices of commercial items (see section 2.101) sold in substantial quantities to the general public (see paragraph (b)(2) of this section); or—

(iii) Prices set by law or regulation (see paragraph (b)(3) of this section).

(2) For acquisition of a commercial item if an exception under paragraph (a)(1) of this section does not apply, but the contracting officer can determine the price is fair and reasonable (see paragraph (b)(4)(i) of this section and 15.804-5(b));

(3) For modifications to contracts/subcontracts for commercial items, if the basic contract/subcontract was awarded without the submission of cost or pricing data because the action was exempt from cost or pricing data requirements of 15.804-2 and the modification does not change the contract/subcontract to a contract/subcontract for the acquisition of other than a commercial item (see paragraph (b)(4)(ii) of this section); or

(4) For exceptional cases (see paragraph (b)(5) of this section).

(b) *Standards for exceptions from cost or pricing data requirements.*

(1) *Adequate price competition.* A price is based on adequate price competition if—

(i) Two or more responsible offerors, competing independently, submit priced offers responsive to the Government's expressed requirement and if—

(A) Award will be made to a responsible offeror whose proposal offers either—

(1) The greatest value (see 15.605(c)) to the Government and price is a substantial factor in source selection; or

(2) The lowest evaluated price; and

(B) There is no finding, supported by a statement of the facts and approved at a level above the contracting officer, that the price of the otherwise successful offeror is unreasonable.

(ii) There was a reasonable expectation, based on market analysis or other assessment, that two or more responsible offerors, competing independently, would submit priced offers responsive to the solicitation's expressed requirement, even though only one offer is received from a responsible, responsive offeror and if—

(A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g.,—

(1) The offeror believed that at least one other offeror was capable of submitting a meaningful, responsive offer.

(2) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(B) The determination is approved at a level above the contracting officer that the proposed price is based on adequate price competition and is reasonable; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions under contracts that resulted from adequate price competition.

(2) *Established catalog or market prices—(i) Established catalog price.*

Established catalog prices are prices (including discount prices) recorded in a catalog, price list, schedule or other verifiable and established record that (A) are regularly maintained by the manufacturer or vendor; (B) are published or otherwise available for customer inspection, and (C) state current or last sales price. An item will automatically qualify for this exception if sold in substantial quantities, and sales at established catalog prices made to the general public are at least one-fourth of total sales of the item. If an item does not meet these criteria, an exception may also apply under paragraph (b)(2)(vi) of this section.

(ii) *Established market price.* An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror.

(iii) *Based on.* A price may also be based on an established catalog or market price if the item being purchased is not itself a catalog or market priced commercial item but is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resorting to cost analysis. If a price is based on estimated future sales and prices, then provision should be made for future price adjustment, if actual sales and prices differ significantly from the estimated sales and prices upon which the contract price was based.

(iv) *Sold in substantial quantities.* An item is sold in substantial quantities if there are sales of more than a nominal quantity based on the norm of the industry segment. For services to be sold in substantial quantities, they must also be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained principally to provide the services.

(A) The method used to establish sales for catalog priced items may be sales order, contract, shipment, invoice, actual recorded sales or other records, so long as the method used is consistent and provides an accurate indication of sales activity. If the item would not otherwise qualify for an exception, sales of the item by affiliates (see 19.101 for definition) of the offeror may be considered in addition to sales of the item by the offeror if—

(1) The offeror provides and separately identifies all data required to be submitted that are related to the sales by the affiliate (e.g., information required by the Standard Form (SF) 1412);

(2) The affiliate agrees in writing to provide the same preaward and post-award access to records as is provided by the offeror; and

(3) All sales of the item by the affiliate are considered, not just catalog sales.

(B) An exception may apply for an item based on the market price of the item regardless of the quantity of sales of the item previously made by the offeror or the types of customers for these sales.

(v) The general public consists of buyers other than the U.S. Government or its instrumentalities, e.g., U.S. Government corporations. The general public does not include (A) affiliates of the offerors, (B) buyers of items for U.S. Government end use, or (C) purchases by the U.S. Government on behalf of foreign governments, such as for Foreign Military Sales.

(vi) *Discretionary criteria.* Even though the criteria of paragraphs

(b)(2)(i) and (ii) of this section are not met, the contracting officer may use other criteria to determine that the price of the item is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public. For example—

(A) The item recently qualified for an exemption but no longer qualifies due to an unusual level of sales to the Government; or

(B) The item is a commercial item no longer sold to the public, but is still required by the Government and the proposed price can be determined reasonable based upon consideration of differences in quantities, terms, conditions, or other appropriate factors in comparison to the last price for which an exemption was granted.

(3) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws are sufficient to set a price.

(4) *Commercial items.* (i) For acquisitions of commercial items, if the exceptions at 15.804-1(a)(1) do not apply, the contracting officer shall obtain information from the prospective contractor or other sources regarding prices at which the same or similar items have been sold in the commercial marketplace in order to determine whether the price is fair and reasonable. Cost or pricing data may be obtained for such a commercial item only if the contracting officer makes a written determination that such information is inadequate for performing a price analysis and determining price reasonableness.

(ii) For modifications of commercial items, the exception at 15.804-1(a)(3) applies if the modification of a commercial item does not change the item from a commercial item to a noncommercial item. However, if the modification changes the nature of the work under the contract/subcontract either by a change to the commercial item or by the addition of other noncommercial work, the contracting officer is not prohibited from obtaining cost or pricing data for the added work.

(5) *Exceptional cases.* The head of the contracting activity may, in exceptional cases and without power of delegation, waive the requirement for submission of cost or pricing data. For example, a waiver should be considered if another exemption does not apply but the price can be determined to be fair and reasonable. The authorization for the waiver and the reasons for granting it shall be in writing. If the head of the contracting activity has waived the requirement for submission of cost or pricing data, the contractor or higher-

tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data for purposes of 15.804-2(a)(1). Consequently, award of any lower-tier subcontract expected to exceed the pertinent threshold set forth at 15.804-2(a)(1) requires the submission of cost or pricing data unless 15.804-1 otherwise applies to the subcontract.

(c) *Qualifying for an exception.* (1) In order to qualify for an exception based on established catalog or market price or prices set by law or regulation, the offeror must request an exemption. The contracting officer may specify one of the following methods:

(i) *Customary method*—SF 1412, Request for Exemption from Cost or Pricing Data.

(A) It is not necessary to establish an exemption for each line item. Consequently, a SF 1412 may be appropriate only for major items, i.e., if the proposed price for the total quantity of an item exceeds \$100,000 or another threshold specified by the contracting officer.

(B) If none of the items has a proposed price for its total quantity in excess of \$100,000 or another threshold specified by the contracting officer, a SF 1412 should be obtained for the item with the highest total proposed price.

(C) The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists.

(ii) *Prior exemption.* (A) If the U.S. Government has acted favorably on an exemption request for the same or similar items, the contracting officer may consider the prior submissions as support for the current exemption request. Relief from the submission of new information does not relieve the contracting officer from the requirement to determine reasonableness of price on the current acquisition.

(B) When acquiring by separate contract an item included on an active Federal Supply Service or Information Resource Management Service Multiple Award Schedule contract, the contracting officer should grant an exemption and not require a SF 1412 or similar exemption documentation if the offeror has provided as proof of the prior exemption a copy of the Certificate of Established Catalog or Market Price that was provided to GSA. Price analysis shall be performed in

accordance with 15.805-2 to determine reasonableness of price.

(iii) *Repetitive acquisitions.* The contracting officer and offeror may make special arrangements for the submission of exemption requests for repetitive acquisitions of catalog items or market items. These arrangements can take any form as long as they set forth an effective period and the exemption criteria at 15.804-1(b)(2) or (3) are satisfied. Such arrangements may be extended to other Government offices with their concurrence.

(iv) *Other.* The contracting officer may request or agree to accept information other than that specified in paragraphs (c)(1)(i) through (iii) of this section.

(2) If the offeror/contractor does not qualify for an exception under paragraph (c)(1) of this section, an exemption may nevertheless be requested as a commercial item (see paragraph (b)(4) of this section) or as an exceptional case (see paragraph (b)(5) of this section). The contracting officer shall request sufficient documentation to support the request.

15. Section 15.804-2 is revised to read as follows:

15.804-2 Requiring Cost or Pricing Data

(a)(1) Cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.804-1 applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver in accordance with 15.804-1(b)(5) should be considered. The threshold for obtaining cost or pricing data is \$500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. Except as provided in 15.804-1, cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect at time of agreement on price or, in the case of existing contracts, the threshold specified in the contract—

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data. (See 15.804-1(b)(5).)

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this section. Price adjustment amounts shall consider both increases and decreases. (For example, a \$150,000 modification resulting from a

reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(2) Contracting officers shall, if requested by the prime contractor, modify contracts to change the threshold in the contract to the cost or pricing data threshold in paragraph (a)(1) of this section, without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of the clauses 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications, and 52.215-25, Subcontractor Cost or Pricing Data—Modifications, or 52.215-24, Subcontractor Cost or Pricing Data, as applicable. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses.

(3) Unless prohibited by 15.804-1(a)(1), the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this section provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.804-4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of final agreement on price or, if applicable, another date agreed upon between the parties.

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply under 15.804-1, the data shall not be considered cost or pricing data as

defined in 15.801 and shall not be certified in accordance with 15.804-4.

(d) The requirements of this section also apply to contracts entered into by the head of an agency on behalf of a foreign government.

15.804-3 [Reserved]

16. Section 15.804-3 is removed and reserved.

17. Section 15.804-4 is amended by revising paragraph (a), the double asterisk footnote to the certification statement following paragraph (a), and paragraph (e) to read as follows:

15.804-4 Certificate of Current Cost or Pricing Data

(a) When cost or pricing data are required under 15.804-2, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown following this paragraph (a), and shall include the executed certificate in the contract file. The certificate states that the cost or pricing data are accurate, complete, and current as of the date the contractor and the Government agreed on a price or, if applicable, another date agreed upon between the parties.

Certificate of Current Cost or Pricing Data

* * * * *

* * * Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, another date agreed upon between the parties.

* * * * *

(e) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply under 15.804-1, the data shall not be considered cost or pricing data and shall not be certified in accordance with this section.

* * * * *

18. Section 15.804-5 is added to read as follows:

15.804-5 Requiring Information Other Than Cost or Pricing Data

(a)(1) If cost or pricing data are not required because an exception under 15.804-1 other than paragraph (a)(2) of this section applies, or an action is at or below the threshold set forth at 15.804-2(a)(1), the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation.

(2) The contracting officer may require submission of information other than cost or pricing data only to the extent necessary to determine reasonableness of the price or cost

realism. Such data shall not be certified in accordance with 15.804-4.

(3) If cost or pricing data are not requested in the solicitation because the contracting officer has a reasonable expectation that adequate price competition as discussed at 15.804-1(b)(1) will result, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches. The contractor's format for submitting such information shall be used unless the contracting officer determines that use of a specific format is essential.

(4) When acquiring commercial items, if the action is based on adequate price competition, generally no additional information is necessary to determine the reasonableness of price. However, if it is determined that additional information is necessary to determine the reasonableness of the price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror.

(5) When cost or pricing data are not required because an action is at or below the threshold set forth at 15.804-2(a)(1), information requested under paragraph (a)(2) of this section shall include, as a minimum, appropriate information on the prices and quantities at which the same or similar items have previously been sold, that is adequate for evaluating the reasonableness of the proposed price. Partial or limited cost information may also be required. For example, cost information might be necessary to support an analysis of material costs, but not for labor and overhead costs.

(6) When acquiring commercial items, unless adequate information is available from government sources, it may be necessary to obtain from the prospective contractor information such as that regarding—

(i) The supplier's marketing system (e.g., use of jobbers, brokers, sales agencies, or distributors);

(ii) The services normally provided commercial purchasers (e.g., engineering, financing, advertising or promotion);

(iii) Normal quantity per order;

(iv) Annual volume of sales to largest customers;

(v) Adjustments such as rebates, credits, or trade-ins available commercially but not available or used by the Government;

(vi) Additional sales inducements such as training or extended warranty periods provided to some customers if not provided to the Government; or

(vii) Prices charged by the primary source of an item offered by a reseller.

(b)(1) When acquiring commercial items for which an exception under 15.804-1(a)(2) may apply, the contracting officer shall seek to obtain from the offeror or contractor information on prices at which the same or similar items have been sold in the commercial market, that is adequate for evaluating, through price analysis, the reasonableness of the price of the action.

(2) If such information is not available from the offeror or contractor, the contracting officer shall seek to obtain such information from another source or sources.

(3) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(4) In requesting information from an offeror under this paragraph (b), the contracting officer shall, to the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations. The SF 1412 shall not be used for this purpose.

(5) Any information obtained pursuant to this paragraph (b) that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed by the Government.

(c) If, after receipt of offers, the contracting officer concludes there is insufficient information available to determine price reasonableness and none of the exceptions under 15.804-1 applies, then cost or pricing data shall be obtained, unless a waiver is granted (see 15.804-1(b)(5)).

19. Section 15.804-6 is amended by revising the heading and paragraphs (a) and (b) and amending Table 15-2 by:

- (a) Revising the heading;
- (b) Adding introductory text;
- (c) Revising the first paragraph of item 1 and revising the "Established Catalog" subparagraph;—
- (d) Revising item 4;
- (e) Amending in Table B of item 8 by revising the "under column (2)" instructions under the table and;

Adding Table 15-3 above paragraph (c) and revising the first sentence of paragraph (d).

The revised and added text reads as follows:

15.804-6 Submission of Cost or Pricing Data or Other Information—

(a) Taking into consideration the policy at 15.802, the contracting officer shall specify in the solicitation (see 52.215-40 and 52.215-41)——

(1) Whether cost or pricing data are required;—

(2) That, in lieu of submitting cost or pricing data, the offeror may submit a

request for exemption from the requirement to submit cost or pricing data, as specified by the contracting officer in accordance with 15.804-1(c);—

(3) Other information required, if cost or pricing data are not necessary;—

(4) The format (see paragraph (b) of this section) in which the cost or pricing data or other information shall be submitted; and—

(5) Necessary preaward or postaward access to offeror's records if not provided by use of Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), Standard Form (SF) 1412, Request for Exemption from Submission of Cost or Pricing Data, or Standard Form (SF) 141X, Proposal Cover Sheet (Cost or Pricing Data Not Required); or a standard clause such as 52.214-26, Audit and Records Sealed—Bidding, 52.215-1, Audit and Records—Negotiation, or 52.215-XX, Audit—Commercial Items.—

(b)(1) Cost or pricing data shall be submitted on a SF 1411 unless required to be submitted on one of the termination forms specified in 48 CFR part 49, subpart 49.6. The SF 1411 shall not be used to submit any information other than cost or pricing data. Contract pricing proposals submitted on SF 1411 with supporting attachments shall be prepared in accordance with Table 15-2. Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.—

(2) If information other than cost or pricing data is required to support price reasonableness or cost realism, the contracting officer may require such information to be submitted using a SF 141X. The information is not considered cost or pricing data in accordance with 15.804-2, and shall not be certified in accordance with 15.804-4. Information submitted on a SF 141X shall be prepared following the instructions provided in Table 15-3.

Table 15-2 Instructions for Submission of a Contract Pricing Proposal When Cost or Pricing Data are Required

The SF 1411 provides a cover sheet for use by offerors to submit to the Government a pricing proposal of estimated and/or actual costs only when cost or pricing data are required.

1. The pricing proposal shall be segregated by contract line item with sufficient detail to permit cost analysis. Attach cost-element breakdowns, using the applicable formats prescribed in item 8A, B, or C of this section for each proposed line item. These breakdowns must conform to the instructions in the solicitation and any specific requirements established by the contracting officer. Furnish supporting breakdowns for

each cost element, consistent with offeror's cost accounting system.

* * * * *

Established Catalog or Market Prices/Prices Set by Law or Regulation/Commercial Item Not Covered By Another Exception—When an exemption from the requirement to submit cost or pricing data is requested, whether the item was produced by others or by the offeror, provide justification for the exemption as required by 15.804-1(c).

* * * * *

4. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer or an authorized representative. As later information comes into the offeror's possession, it should be promptly submitted to the contracting officer in a manner that clearly shows how the information impacts the offeror's price proposal. The requirement for submission of cost or pricing data continues up to the time of final agreement on price, or another date agreed upon between the parties if applicable.

* * * * *

8. Headings for Submission of Line-Item Summaries

* * * * *

B. Change Orders, Modifications, and Claims.

* * * * *

Under Column (2)—Include (i) the current estimates of the cost to complete the deleted work not yet performed (not the original proposal estimates), and (ii) the cost of deleted work already performed.

* * * * *

Table 15-3 Instruction for Submission of Information Other Than Cost or Pricing Data

SF 141X is a cover sheet for use by offerors to submit information to the Government when cost or pricing data are not required but the contracting officer has requested information to help establish price reasonableness or cost realism. Such information is not considered cost or pricing data, and shall not be certified in accordance with 15.804-4. Requests for information should be tailored so that only necessary data are requested.

1. The information submitted shall be at the level of detail described in the solicitation or specified by the contracting officer. The offeror's own format is acceptable unless the contracting officer determines that use of a specific format is essential.

A. If adequate price competition is expected, the information may include cost or technical information necessary to determine the cost realism and adequacy of the offeror's proposal, e.g., information adequate to validate that the proposed costs are consistent with the technical proposal, or cost breakdowns to help identify unrealistically low cost proposals.

B. If the offer is expected to be at or below the threshold set forth at 15.804-2(a)(1), and adequate price competition is not expected, the information may consist of data to permit the contracting officer and authorized representatives to determine price reasonableness, e.g., information to support an analysis of material costs (when sufficient information on labor and overhead rates is already available), or information on prices and quantities at which the offeror has previously sold the same or similar items.—

2. Any information submitted must support the price proposed. Include sufficient detail or cross references to clearly establish the relationship of the information provided to the price proposed. Support any information provided by explanations or supporting rationale as needed to permit the contracting officer and authorized representatives to evaluate the documentation.

* * * * *

(d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or specifically identified in writing by the time of agreement on price or another time agreed upon by the parties. * * *

* * * * *

20. Section 15.804-7 is amended by revising paragraphs (b)(7)(i), (ii)(B), and (iii) to read as follows:

15.804-7 Defective Cost or Pricing Data

* * * * *

(b) * * *

(7)(i) In addition to the price adjustment amount, the Government is also entitled to interest on any overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments would not result from amounts paid for contract financing as defined in 32.902.

(ii) * * *

(B) Consider the date of each overpayment (The date of overpayment for this interest calculation shall be (1) the date payment was made for the related completed and accepted contract items, or (2) for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

* * * * *

(iii) In arriving at the amount due for penalties on contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of

overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

* * * * *

21. Section 15.804-8 is amended by revising the heading and adding paragraphs (h) and (i) to read as follows:

15.804-8 Contract Clauses and Solicitation Provisions

* * * * *

(h) *Requirements for Cost or Pricing Data or Other Information.* The contracting officer shall insert the provision at 52.215-41, Requirements for Cost or Pricing Data or Other Information, in solicitations only when it is contemplated that cost or pricing data or other information will be required. Use the provision with Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of 15.804-6(b). Use the provision with Alternate II when copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the provision with Alternate III when submission via electronic media is required. Replace the basic provision with Alternate IV when a SF 1411 will not be required because an exception applies, but other information is required pursuant to 15.804-5.

(i) *Requirements for Cost or Pricing Data or Other Information—Modifications.* The contracting officer shall insert the clause at 52.215-42, Requirements for Cost or Pricing Data or Other Information Modifications, in solicitations and contracts only if it is contemplated that cost or pricing data or other information will be required for modifications. Use the clause with Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of 15.804-6(b). Use the clause with Alternate II if copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the clause with Alternate III if submission via electronic media is required. Replace the basic clause with Alternate IV if a SF 1411 is not required because an exception applies, but other information is required pursuant to 15.804-5.

22. Section 15.805-1 is amended by adding paragraph (d) to read as follows:

15.805-1 General

* * * * *

(d) The Armed Services Pricing Manual (ASPM Volume I, "Contract Pricing", and Volume 2, "Price Analysis") was issued by the Department of Defense to guide pricing and negotiating personnel. The ASPM

provides detailed discussion and examples applying pricing policies to pricing problems. ASPM is available for use for instruction and professional guidance. However, it is not directive and its references to Department of Defense forms and regulations should be considered informational only. Copies of ASPM Vol. 1 (Stock No. 008-000-00457-9) and Vol. 2 (Stock No. 008-000-00467-6) may be purchased from the Superintendent of Documents, U.S. Government Printing Office by telephone (202) 512-1800 or fax (202) 512-2250, or by mail order from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

23. Section 15.805-2 is amended by adding paragraph (f) to read as follows:

15.805-2 Price Analysis

* * * * *

(f) Comparison of proposed prices with prices for the same or similar items obtained through market research.—

24. Section 15.806-1 is amended in the first sentence of paragraph (a)(2) by removing the word "claims" and inserting "requests" in its place, and revising paragraph (b) to read as follows:

15.806-1 General

* * * * *

(b) Unless the subcontract qualifies for an exception under 15.804-1, any contractor required to submit cost or pricing data also shall obtain cost or pricing data before awarding any subcontract or purchase order expected to exceed the pertinent threshold set forth at 15.804-2(a)(1), or issuing any modification involving a price adjustment expected to exceed the pertinent threshold set forth at 15.804-2(a)(1) (see example of pricing adjustment at 15.804-2(a)(1)(iii)). To waive subcontractor cost or pricing data, follow the procedures at 15.804-1(b)(5).

* * * * *

25. Section 15.806-2 is amended by revising paragraph (a), the first sentence of paragraph (c), and paragraph (d) to read as follows:

15.806-2 Prospective Subcontractor Cost or Pricing Data

(a) The contracting officer shall require a contractor that is required to submit to the Government (or cause submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is (1) \$1,000,000 or more, (2) both more than the pertinent threshold set forth at 15.804-2(a)(1) and more than 10% of the prime contractor's proposed price, or (3) considered to be necessary for adequately pricing the prime contract.

These subcontract cost or pricing data may be submitted using a Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required).

* * * * *

(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the exceptions in 15.804-1, the contracting officer shall not require submission of cost or pricing data to the Government in that case. * * *

(d) Subcontractor data shall be accurate, complete, and current as of the date of final price agreement or, if applicable, another date agreed upon between the parties, given on the contractor's Certificate of Current Cost or Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data.

* * * * *

26. Section 15.808 is amended by revising paragraphs (a) (6) and (7) to read as follows:

15.808 Price Negotiation Memorandum

(a) * * *

(6) If cost or pricing data were not required in the case of any price negotiation exceeding the thresholds set forth at 15.804-2(a)(1), the exception used and the basis for it.—

(7) If cost or pricing data were required by the head of the contracting activity under 15.804-2(a)(3), the rationale for such requirement.

* * * * *

27. Section 15.812-1 is amended by revising paragraph (b) and the second sentence of paragraph (c) to read as follows:

15.812-1 General

* * * * *

(b) However, the policy in paragraph (a) of this section does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a commercial item sold in substantial quantities to the general public (see 15.804-1(b)(2)). —

(c) * * * The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected (see 15.804-1(b)(1)). * * *

15.813 [Reserved] and 15.813-1 Through 15.813-7 [Removed]—

28. Section 15.813 is removed and reserved and subsections 15.813-1 through 15.813-7 are removed.

PART 16—TYPES OF CONTRACTS

16.203-4 [Amended]—

29. Section 16.203-4 is amended in paragraphs (a)(1)(ii) and (b)(1)(ii) by removing “15.804-3” and inserting “15.804-1” in its place. —

30. Section 16.501(c) is amended by revising the first sentence to read as follows:

16.501 General

* * * * *

(c) Indefinite-delivery contracts may provide for firm fixed prices (see 16.202), fixed prices with economic price adjustment (see 16.203), fixed prices with prospective redetermination (see 16.205), or prices based on catalog or market prices (see 15.804-1(b)(2)).

* * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES—

31. Section 31.205-26(e) is revised to read as follows:

31.205-26 Material Costs

* * * * *

(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at a price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when the item being transferred qualifies for an exception under 15.804-1 and the contracting officer has not determined the price to be unreasonable.

* * * * *

PART 33—PROTESTS, DISPUTES, AND APPEALS—

32. Section 33.207(d) is revised to read as follows:

33.207 Contractor Certification

* * * * *

(d) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in 15.804-2(a)(1)(iii) regarding cost or pricing data).

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT ENGINEERING CONTRACTS—

33. Section 36.402 is amended by revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

36.402 Price Negotiation

* * * * *

(b) The contracting officer shall evaluate proposals and associated cost or pricing data or other information and shall compare them to the Government estimate.—

(1) When submission of cost or pricing data is not required (see 15.804-1 and 15.804-2, and any element of proposed cost differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost data concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

* * * * *

PART 45—GOVERNMENT PROPERTY—

34. Section 45.103(b)(1) is revised to read as follows:

45.103 Responsibility and Liability for Government Property

* * * * *

(b) * * *—

(1) Negotiated fixed price contracts for which the contract price is not based upon an exception at 15.804-1;

* * * * *

35. Section 45.106(b)(2) is revised to read as follows:

45.106 Government Property Clauses

* * * * *

(b) * * *—

(2) If the contract is (i) a negotiated fixed-price contract for which prices are not based on an exception at 15.804-1, or (ii) a fixed-price service contract which is performed primarily on a government installation, provided the contracting officer determines it to be in the best interest of the government (see subpart 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.

* * * * *

PART 46—QUALITY ASSURANCE

46.804 [Amended]—

36. Section 46.804 is amended by removing “(see 15.804-3(c))” and inserting “(see 15.804-1(b)(2))” in its place.

PART 49—TERMINATION OF CONTRACTS**49.208 [Amended]—**

37. Section 49.208 is amended in the introductory text by adding “(Cost or Pricing Data Required)” before the period at the end.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES—

38. Section 52.214–27 is amended by revising the clause date and paragraphs (a) and (e)(2) to read as follows:

52.214–27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding

* * * * *

Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding (XXX 1995)–

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than the threshold for the submission of cost or pricing data at FAR 15.804–2(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.804–1 applies.

* * * * *

(e) * * * _

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

39. Section 52.214–28 is amended by revising the clause date and paragraphs (a), (b), and (d) to read as follows:

52.214–28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding

* * * * *

Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (XXX 1995)–

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), and (2) be limited to such modifications.–

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1) when entered into, or pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by

specific identification in writing), unless an exception under FAR 15.804–1 applies.

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1).

(End of clause)

52.215–22 [Amended]—

40. Section 52.215–22 is amended by revising the clause date to “(XXX 1995)”, and in paragraph (d)(2) by removing “For Department of Defense contracts only, a” and inserting “A” in its place.–

41. Section 52.215–23 is amended by revising the clause date and paragraphs (a) and (e)(2) to read as follows:

52.215–23 Price Reduction for Defective Cost or Pricing Data—Modifications

* * * * *

Price Reduction for Defective cost or Pricing Data—Modifications (XXX 1995)–

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data, at FAR 15.804–2(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.804–1 applies.

* * * * *

(e) * * * _

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

42. Section 52.215–24 is amended by revising the clause date, paragraph (a), and the introductory text of (c) to read as follows:

52.215–24 Subcontractor Cost or Pricing Data

* * * * *

Subcontractor Cost or Pricing Data (XXX 1995)–

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804–1 applies.

* * * * *

(c) In each subcontract that exceeds the threshold for submission of cost or pricing

data at FAR 15.804–2(a)(1), when entered into, the Contractor shall insert either—

* * * * *

43. Section 52.215–25 is amended by revising the clause date and paragraphs (a), (b) and (d) to read as follows:

52.215–25 Subcontractor Cost or Pricing Data—Modifications

* * * * *

Subcontractor Cost or Pricing Data—Modifications (XXX 1995)–

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1); and (2) be limited to such modifications.–

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), when entered into, or pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804–1 applies.

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), when entered into.

(End of clause)

44. Section 52.215–26 is amended by revising the clause date and the last sentence in paragraph (b) to read as follows:

52.215–26 Integrity of Unit Prices

* * * * *

Integrity of Unit Prices (XXX 1995)

* * * * *

(b) * * * A price is based on an established catalog or market price only if the item being purchased is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified without resort to cost analysis.

* * * * *

52.215–32 and 52.215–37 [Removed and Reserved]

45. Sections 52.215–32 and 52.215–37 are removed and reserved.

46. Sections 52.215–41 and 52.215–42 are added to read as follows:

52.215–41 Requirements for Cost or Pricing Data or Other Information

As prescribed in 15.804–8(h), insert the following provision:

Requirements for Cost or Pricing Data or Other Information (XXX 1995)

(a) In lieu of submitting cost or pricing data, offerors may submit a written request for exemption from the requirement for submission of cost or pricing data by submitting—

(1) SF 1412, Request for Exemption From Submission of Cost or Pricing Data;

(2) Information relative to an exemption granted for prior or repetitive acquisitions; or

(3) For commercial items not covered by another exception, information on prices at which the same item or similar items have been sold in the commercial market.

(b)(1) Unless the offeror is granted an exemption from the requirement to submit cost or pricing data, the offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after final agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4.

(End of provision)

Alternate I (XXX 1995). As prescribed in 15.804-8(h), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision: —

(b)(1) Unless the offeror is granted an exemption from the requirement to submit cost or pricing data, the offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

Alternate II (XXX 1995). As prescribed in 15.804-8(h), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (XXX 1995). As prescribed in 15.804-8(h), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignate as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: (*Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.*).

Alternate IV (XXX 1995). As prescribed in 15.804-8(h), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: (*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804-6(a)(5). Standard Form 141X, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.*)

52.215-42 Requirements for Cost or Pricing Data or Other Information—Modifications

As prescribed in 15.804-8(i), insert the following clause:

Requirements for Cost or Pricing Data or Other Information—Modifications (XXX 1995)

(a) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed threshold set forth at FAR 15.804-2(a)(1), the Contractor may submit a written request for exemption from the requirement for submission of cost or pricing data by submitting—

(1) Standard Form 1412, Request for Exemption From Submission of Cost or Pricing Data;

(2) Information relative to an exemption granted for prior or repetitive acquisitions; or

(3) For commercial items not covered by another exception, information on prices at which the same item or similar items have been sold in the commercial market.

(b)(1) Unless the Contractor is granted an exemption from the requirement to submit cost or pricing data, the Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after final agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4.

(End of clause)

Alternate I (XXX 1995). As prescribed in 15.804-8(i), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b)(1) Unless the Contractor is granted an exemption from the requirement to submit cost or pricing data, the Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

Alternate II (XXX 1995). As prescribed in 15.804-8(i), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (XXX 1995). As prescribed in 15.804-8(i), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: (*Insert media format.*)

Alternate IV (XXX 1995). As prescribed in 15.804-8(i), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: (*Insert description of the information and the*

format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804-6(a)(5). Standard Form 141X, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.)

47. Section 52.215-XX is added to read as follows:

52.215-XX Audit—Commercial Items

As prescribed at 15.106-2, insert the following clause:

Audit—Commercial Items (XXX 1995)

(a) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form.

(b) This paragraph applies to solicitations and contracts/subcontracts for commercial items that may be or have been granted an exemption from submittal of cost or pricing data under FAR 15.804-1(a)(2). In order to determine the accuracy of the information on prices at which the same or similar items have been sold in the commercial market, the Contracting Officer and authorized representatives have a right to examine such information provided by the offeror, Contractor, or subcontractor, and all records that directly relate to such information. This right shall expire two years after the date of award of the contract, or two years after the date of any modification to the contract, with respect to which this information is provided.

(c) If the prime Contractor and each higher-tier subcontractor were required to submit cost or pricing data, the Contractor shall insert the substance of this clause, including this paragraph (c), in each subcontract for which submission of cost or pricing data was required or was exempted under FAR 15.804-1(a)(2).

(End of clause)

52.216-2 Economic Price Adjustment—Standard Supplies

48. Section 52.216-2(a)(2) is amended by removing “15.804-3” and inserting “15.804-1” in its place.

49. Section 52.216-3 is amended by revising the clause date and paragraph (a)(2) to read as follows:

52.216-3 Economic Price Adjustment—Semistandard Supplies

* * * * *

Economic Price Adjustment—Semistandard Supplies (XXX 1995)

(a) * * * (2) meets the criteria of subsection 15.804-1 of the Federal Acquisition Regulation (FAR), and * * *

50. Section 52.216-5 is amended by revising the clause date and paragraph (d)(1)(i)(A) to read as follows:

52.216-5 Price Redetermination—Prospective

* * * * *

Price Redetermination—Prospective (XXX 1995)

* * * * *

(d) * * *

(1) * * *

(i) * * *

(A) An estimate and breakdown of the costs of these supplies or services on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required) (or in any other form on which the parties may agree);

* * * * *

51. Section 52.216–6 is amended by revising the clause date and paragraph (c)(1)(ii) to read as follows:

52.216–6 Price Redetermination—Retroactive

* * * * *

Price Redetermination—Retroactive (XXX 1995)

* * * * *

(c) * * *

(1) * * *

(ii) A statement on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

* * * * *

52. Section 52.216–25, introductory text, is revised to read as follows:

52.216–25 Contract Definitization

As prescribed in 16.603–4(b)(3), insert the following clause in solicitations and contracts when a letter contract is

contemplated. If, at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 15.804–1 for not requiring submission of cost or pricing data, the words “and cost or pricing data supporting its proposal” may be deleted from paragraph (a) of the clause.

* * * * *

53. Section 52.222–48 is amended by revising the clause date and paragraph (a)(ii) to read as follows:

52.222–48 Exemption From Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical and/or Office and Business Equipment—Contractor Certification

* * * * *

Exemption From Application of Service Contract Act Provisions (XXX 1995)

(a) * * * (ii) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain ADP, scientific and medical and/or office and business equipment. An “established catalog price” is a price (including discount price) recorded in a catalog, price list schedule, or other verifiable and established record that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or

were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated by data from sources independent of the manufacturer or Contractor; and * * *

* * * * *

PART 53—FORMS

54. Section 53.215–2 is revised to read as follows:

53.215–2 Price Negotiation (SF’s 1411, 1412, and 141X)

The following standard forms are prescribed for use in connection with requirements for obtaining cost or pricing data or other information from offerors or contractors, as specified in 15.804:

(a) SF 1411 (REV. XXX/95), *Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required)*. (See 15.804–6(b)(1).)

(b) SF 1412 (REV. XXX/95), *Request for Exemption from Submission of Cost or Pricing Data*. (See 15.804–1(e).)

(c) SF 1412A (XXX/95), *Continuation Sheet* (for SF 1412). SF 1412 and SF 1412A are authorized for local reproduction.

(d) SF 141X (XXX/95), *Proposal Cover Sheet (Cost or Pricing Data Not Required)*. (See 15.804–6(b)(2).)

BILLING CODE 6820–34–U

CONTRACT PRICING PROPOSAL COVER SHEET <i>(Cost or Pricing Data Required)</i>		1. SOLICITATION/CONTRACT MODIFICATION NO.	OMB No.: 9000-0013 Expires:
Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRB), Office of Federal Acquisition Policy, GSA, Washington, DC 20408; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0013), Washington, DC 20503.			
NOTE: This form is used in contract action if submission of cost or pricing data is required. (See FAR 15.804-6(b))			
2. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)		3A. NAME AND TITLE OF OFFEROR'S POINT OF CONTACT	
		4. TYPE OF CONTRACT ACTION (Check)	
		<input type="checkbox"/> A. NEW CONTRACT <input type="checkbox"/> D. LETTER CONTRACT <input type="checkbox"/> B. CHANGE ORDER <input type="checkbox"/> E. UNPRICED ORDER <input type="checkbox"/> C. PRICE REVIEW/REDTERMINATION <input type="checkbox"/> F. OTHER (Specify)	
		6. PROPOSED COST (A + B = C)	
		<input type="checkbox"/> A. COST <input type="checkbox"/> B. PROFIT/FEE <input type="checkbox"/> C. TOTAL	
5. TYPE OF CONTRACT (Check) <input type="checkbox"/> FFP <input type="checkbox"/> CPFF <input type="checkbox"/> CPIF <input type="checkbox"/> CPAF <input type="checkbox"/> FPI <input type="checkbox"/> OTHER (Specify)			
7. PLACE(S) AND PERIOD(S) OF PERFORMANCE			
8. List and reference the identification, quantity and total price proposed for each contract item. A line item cost breakdown supporting this recap is required unless otherwise specified by the Contracting Officer. (Continue on reverse, and then on plain paper, if necessary. Use same headings.)			
A. LINE ITEM NO.	B. IDENTIFICATION	C. QUANTITY	D. TOTAL PRICE
E. (PROP) REF. (P)			
9. PROVIDE NAME, ADDRESS, AND TELEPHONE NUMBER FOR THE FOLLOWING (If available)			
A. CONTRACT ADMINISTRATION OFFICE		B. AUDIT OFFICE	
10. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS WORK? (If "Yes," identify)		11A. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? (If "Yes," complete item 11B)	
<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO	
12. HAVE YOU BEEN AWARDED ANY CONTRACT OR SUBCONTRACT FOR THE SAME OR SIMILAR ITEMS WITHIN THE PAST 3 YEARS? (If "Yes," identify item(s), customer(s) and contract number(s))		13. IS THIS PROPOSAL CONSISTENT WITH YOUR ESTABLISHED ESTIMATING AND ACCOUNTING PRACTICES AND PROCEDURES AND FAR PART 31, COST ACCOUNTING STANDARDS? (If "no," explain)	
<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO	
14. COST ACCOUNTING STANDARDS BOARD (CASS) STATE (Public Law 91-379 as amended and FAR PART 30)			
A. WILL THIS CONTRACT ACTION BE SUBJECT TO CASS REGULATIONS? (If "No," explain in proposal)		B. HAVE YOU SUBMITTED A CASS DISCLOSURE STATEMENT (CASS DS-1 or 2)? (If "Yes," specify in proposal the office to which submitted and if determined to be adequate)	
<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO	
C. HAVE YOU BEEN NOTIFIED THAT YOU ARE OR MAY BE IN NONCOMPLIANCE WITH YOUR DISCLOSURE STATEMENT OR COST ACCOUNTING STANDARDS? (If "Yes," explain in proposal)		D. IS ANY ASPECT OF THIS PROPOSAL INCONSISTENT WITH YOUR DISCLOSED PRACTICES OR APPLICABLE COST ACCOUNTING STANDARDS? (If "Yes," explain in proposal)	
<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO	
This proposal is submitted in response to the RFP, contract, modification, etc., in item 1 and reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.804-6(b)(2), Table 35-2. By submitting this proposal, the offeror, if selected for negotiation, grants the contracting officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such records are in written form, in the form of computer data, or any other form, or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.			
15. NAME AND TITLE (Type)		16. NAME OF FIRM	
17. SIGNATURE		18. DATE OF SUBMISSION	

**REQUEST FOR EXEMPTION FROM SUBMISSION OF
CERTIFIED COST OR PRICING DATA**
(See reverse for instructions)
OMB No.: 9000-0013
Expires: 03/31/96

Public reporting burden for this collection of information is estimated to average 3.89 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Federal Acquisition Policy, (VR), GSA, Washington, DC 20405, and to the Office of Management and Budget, Paperwork Reduction Project (9000-0013), Washington, DC 20503.

1. OFFEROR (Name, address, ZIP code)	2. SOLICITATION NUMBER
	3. ITEM OF SUPPLIES AND/OR SERVICES TO BE FURNISHED
4. DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	5. QUANTITY
	TOTAL AMOUNT PROPOSED FOR ITEM \$

By submission of this form the offeror requests exemption from requirements for submitting certified cost or pricing data on the basis that the price offered is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public or is a price set by law or regulation (see FAR 15.804-3). Complete Section III, or III below as applicable.

SECTION I - CATALOG PRICE (See instructions for Items 7 thru 11 on reverse.)

7. CATALOG IDENTIFICATION AND DATE	8. SALES PERIOD COVERED FROM TO
9. CATEGORIES OF SALES	TOTAL UNITS SOLD *
a. Sales at catalog price to the general public	
b. Total sales of catalog item to all customers	
10. REMARKS	

*If your accounting system does not provide precise information, insert your best estimate and explain the basis for it in Item 10, REMARKS. Continue on a separate sheet, if necessary.

11. LIST THREE SALES OF THE ITEM OFFERED			
SALES CATEGORY	DATE	NUMBER OF UNITS SOLD	PRICE/UNIT
a. Lowest price, any customer, any quantity			\$
b. Lowest price, any customer, comparable quantities			\$
c. Lowest price, any customer, same customer class, comparable quantities			\$

SECTION II - MARKET PRICE (See instructions for Item 12 on reverse.)

12. SET FORTH THE SOURCE AND DATE OR PERIOD OF THE MARKET QUOTATION ON WHICH BASED THE MARKET PRICE, THE BASE AMOUNT, AND APPLICABLE DISCOUNTS

SECTION III - LAW OR REGULATION (See instructions for Item 13 on reverse.)

13. IDENTIFY THE LAW OR REGULATION ESTABLISHING THE PRICE OFFERED

REPRESENTATION (See instructions for Item 14 on reverse.)

The offeror certifies to the best of its knowledge and belief that all data submitted concerning the items listed on this form are current, accurate, and complete as of the date of submittal to the Government and are in accordance with the instructions printed on the back of this form and that, except as stated in an attachment, a similar request for exemption involving the same or a similar item has not been denied by the Government within the last 2 years. By submitting this proposal, the offeror, if selected for negotiation, grants the contracting officer or an authorized representative the right to examine at any time before award, the books, records, documents, and other supporting data that will permit verification of the request and an adequate evaluation of the proposed price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

14a. TYPED NAME, TITLE, AND FIRM	14b. SIGNATURE	15. DATE OF SUBMISSION
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Previous edition not useable

STANDARD FORM 1412 (REV.)
Prescribed by GSA
FAR (48 CFR) 53.215-2(b)

Instructions to Offerors Submitting Request for Exemption from Submission of Certified Cost or Pricing Data

The Offeror shall use the SF 1412 to submit a request for exemption from the submission of certified cost or pricing data. Attach all supporting information described below to the SF 1412. Complete Section I, Items 7 through 11, if you are proposing a catalog price. Complete Section II, Item 12, if you are proposing a market price. Complete Section III, Item 13, if you are proposing a price set by law or regulation.

Items 1-6. Self-explanatory. Provide information identified in the applicable block for each item for which an exemption is requested.

Item 7. Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

Additional Information. Provide the following additional information in Items 7 - 11 for the catalog item with the highest total proposed price for the total quantity and for each catalog item with a total proposed price exceeding \$50,000, or for additional items as requested by the contracting officer.

Item 7. Established catalog price and established discount factor are defined at FAR 15.804-3(c). Provide a copy or describe all current discount policies and price lists (published or unpublished) applicable to each class of customer. Show rebates, discounts applicable to multiple quantities or cumulative orders, and volume discounts applicable to the combination of supplies or services into one order. If the proposed price of a catalog item was determined on the basis of assignment of the Government to a particular customer class, identify the customer class and state the reasons for selecting that customer class. To justify a catalog price exemption for the Government item, the catalog item and the offered item must be the same or similar. "Similar item" is defined at FAR 15.804-3(c). For similar items, a statement must be attached identifying the technical differences and explaining, by price analysis, how the proposed price is derived from the catalog price.

Item 8. Sales period for block 9 sales information. This period should include the most recent regular quarterly or longer period for which sales data are reasonably available and should extend back only far enough to provide a total period representative of average sales. You may also attach sales data for a prior representative period if for any reason recent sales are abnormal and the prior period is sufficiently recent to support the proposed price

for the Government item. In the latter case, you must explain, by price analysis only, how the proposed price is derived from the sales made at catalog price for the prior period.

Item 9. (a) Identify the amount of all sales of the catalog item at catalog price, or at an established discount from the catalog price, to the general public as defined in FAR 15.804-3(c) that were made during the period identified in block 8. See FAR 15.804-3(f)(1) if you want sales by affiliates to be considered. (b) Identify the total amount of sales of the catalog item to all customers.

Item 11. Insert the following information on sales made during the most recent regular quarterly or longer period for which sales data are available:

On line a, insert information on the lowest price at which sales of the offered item were made to any customer during the period, regardless of quantity.

On line b, insert the lowest price at which any sales of the offered item were made at comparable quantities to any customer.

On line c, if the proposed price of the catalog item was determined on the basis of assignment of the Government to a particular customer class, insert the lowest price at which sales of the offered item were made at comparable quantities to any customer in that class.

Attach a complete explanation if the price proposed is not the lowest price at which a sale was made to any customer during the period for the same or similar items.

Item 12. Market price exemption criteria appear at FAR 15.804-3(d)(2). The nature of this market should be described. To justify a market-price exemption, the item or service being purchased must be the same as or similar to the market price item or service. Similar item is defined in FAR 15.804-3(c). For similar items, a statement must be attached identifying the specific differences and explaining, by price analysis of the differences (see FAR 15.804-3(f)), how the proposed price is derived from the market price.

Item 13. Identify the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

Item 14. Insert the name and title of the person authorized by the offeror to sign this form.

REQUEST FOR EXEMPTION FROM SUBMISSION OF CERTIFIED COST OR PRICING DATA - CONTINUATION (See reverse for instructions.)	2. SOLICITATION NUMBER	OMB NO.: 9000-0013 Expires: 03/31/96
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3. ITEM OF SUPPLIES AND/OR SERVICES TO BE FURNISHED

4. DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	5. QUANTITY	6. TOTAL AMOUNT PROPOSED FOR ITEM
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SECTION I - CATALOG PRICE (See instructions for Items 7 thru 11 on reverse.)

7. CATALOG IDENTIFICATION AND DATE	8. SALES PERIOD COVERED	
	FROM TO	
9. CATEGORIES OF SALES	TOTAL UNITS SOLD*	10. REMARKS
a. Sales at catalog price to the general public		
b. Total sales of catalog item to all customers		

*If your accounting system does not provide precise information, insert your best estimate and explain the basis for it in Item 10, REMARKS. Continue on a separate sheet, if necessary.

11. SET FORTH THE SALES OF THE ITEM OFFERED			
SALES CATEGORY	DATE	NO. OF UNITS SOLD	PRICE/UNIT
a. Lowest price, any customer, any quantity			\$
b. Lowest price, any customer, comparable quantities			\$
c. Lowest price, any customer, same customer class, comparable quantities			\$

SECTION II - MARKET PRICE (See instructions for Item 12 on reverse.)

12. SET FORTH THE SOURCE AND DATE OR PERIOD OF THE MARKET QUOTATION OR OTHER BASIS FOR MARKET PRICE, THE BASE AMOUNT, AND APPLICABLE DISCOUNTS

SECTION III - LAW OR REGULATION (See instructions for Item 13 on reverse.)

13. IDENTIFY THE LAW OR REGULATION ESTABLISHING THE PRICE OFFERED

Instructions to Offerors Submitting Continuation Sheets for a Request for Exemption from Submission of Certified Cost or Pricing Data

The Offeror shall submit the SF 1412A Continuation Sheet in accordance with the requirements of FAR 15.804-3(e)(1) for additional items that do not fit on a single SF 1412. Attach all supporting information described below to the SF 1412A. Complete Section I, Items 7 through 11, if you are proposing a catalog price. Complete Section II, Item 12, if you are proposing a market price. Complete Section III, Item 13, if you are proposing a price set by law or regulation.

Items 2, 4, 5 & 6. Self-explanatory. Provide information identified in the applicable block for each item for which an exemption is requested.

Item 7. Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

Additional Information. Provide the following additional information in Items 7 - 11 for a catalog item with the highest total proposed price for the total quantity and for each catalog item with a total proposed price exceeding \$100,000, or for additional items as requested by the contracting officer.

Item 7. Established catalog price and established discount factor are defined in FAR 15.804-3(c). Provide a copy or describe all current discount policies and price lists (published or unpublished) applicable to each class of customer. Show rebates, discounts applicable to multiple quantities or cumulative orders, and volume discounts applicable to the combination of supplies or services into one order. If the proposed price of a catalog item was determined on the basis of assignment of the Government to a particular customer class, identify the customer class and state the reasons for selecting that customer class. To justify a catalog price exemption for the Government item, the catalog item and the offered item must be the same or similar. "Similar item" is defined at FAR 15.804-3(c). For similar items, a statement must be attached identifying the technical differences and explaining, by price analysis, how the proposed price is derived from the catalog price.

Item 8. Sales period for block 9 sales information. This period should include the most recent regular quarterly or longer period for which sales data are reasonably available and should extend back only far enough to provide a total period representative of average sales. You may also attach sales data for a prior

representative period if for any reason recent sales are abnormal and the prior period is sufficiently recent to support the proposed price for the Government item. In the latter case, you must explain, by price analysis only, how the proposed price is derived from the sales made at catalog price for the prior period.

Item 9. (a) Identify the amount of all sales of the catalog item at catalog price or at an established discount from the catalog price to the general public as defined in FAR 15.804-3(c) that were made during the period identified in block 8. See FAR 15.804-3(d)(1) if you want sales by affiliates to be considered. (b) Identify the total amount of sales of the catalog item to all customers.

Item 11. Insert the following information on sales made during the most recent regular quarterly or longer period for which sales data are available:

On line a, insert information on the lowest price at which sales of the offered item were made to any customer during the period, regardless of quantity.

On line b, insert the lowest price at which any sales of the offered item were made at comparable quantities to any customer.

On line c, if the proposed price of the catalog item was determined on the basis of assignment of the Government to a particular customer class, insert the lowest price at which sales of the offered item were made at comparable quantities to any customer in that class. Attach a complete explanation if the price proposed is not the lowest price at which a sale was made to any customer during the period for the same or similar items.

Item 12. Market price exemption criteria appear in FAR 15.804-3(d)(2). The nature of this market should be described. To justify a market-price exemption, the item or service being purchased must be the same as or similar to the market price item or service. "Similar item" is defined in FAR 15.804-3(c). For similar items, a statement must be attached identifying the specific differences and explaining, by price analysis of the differences (see FAR 15.804-3(f)), how the proposed price is derived from the market price.

Item 13. Identify the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

PROPOSAL COVER SHEET (Cost or Pricing Data Not Required)		1. SOLICITATION/CONTRACT/MODIFICATION NO.		OMB NO.: 9000-0013 Expires:	
<small>Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRB), Office of Federal Acquisition Policy, GSA, Washington, DC 20406; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0013), Washington, DC 20503.</small>					
2. NAME AND ADDRESS OF OFFEROR (include ZIP Code)		3A. NAME AND TITLE OF OFFEROR'S POINT OF CONTACT		3B. TELEPHONE NO.	
4. TYPE OF CONTRACT ACTION (Check)					
<input type="checkbox"/> A. NEW CONTRACT		<input type="checkbox"/> D. LETTER CONTRACT			
<input type="checkbox"/> B. CHANGE ORDER		<input type="checkbox"/> E. UNPRICED ORDER			
<input type="checkbox"/> C. PRICE REVISION TERMINATION		<input type="checkbox"/> F. OTHER (Specify)			
5. TYPE OF CONTRACT (Check)		6. PROPOSED COST (A+B=C)			
<input type="checkbox"/> FFP <input type="checkbox"/> CPFF <input type="checkbox"/> CPIF <input type="checkbox"/> CPAF <input type="checkbox"/> FPI <input type="checkbox"/> OTHER (Specify)		A. COST		B. PROFIT/FEE	
				C. TOTAL	
7. PLACE(S) AND PERIOD(S) OF PERFORMANCE					
8. List and reference the identification, quantity and total price proposed for each contract line item. (Continue on reverse, if necessary. Use same headings)					
A. LINE ITEM NO.	B. IDENTIFICATION	C. QUANTITY	D. TOTAL PRICE	E. (PROP) REF. (P)	
9. PROVIDE NAME, ADDRESS, AND TELEPHONE NUMBER FOR THE FOLLOWING (if available)					
A. CONTRACT ADMINISTRATION OFFICE			B. AUDIT OFFICE		
10. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS WORK? (If "Yes," identify)					
<input type="checkbox"/> YES <input type="checkbox"/> NO					
11A. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? (If "Yes," complete item 11B. (See FAR Part 32))			11B. TYPE OF FINANCING (Check one)		
<input type="checkbox"/> YES <input type="checkbox"/> NO			<input type="checkbox"/> ADVANCE PAYMENT <input type="checkbox"/> PROGRESS PAYMENTS <input type="checkbox"/> GUARANTEED LOANS		
12. HAVE YOU BEEN AWARDED ANY CONTRACTS OR SUBCONTRACTS FOR THE SAME OR SIMILAR ITEMS WITHIN THE PAST 3 YEARS? (If "Yes," identify item(s), customer(s) and contract number(s))			13. IS THIS PROPOSAL CONSISTENT WITH YOUR ESTABLISHED ESTIMATING AND ACCOUNTING PRACTICES AND PROCEDURES AND FAR PART 31, COST PRINCIPLES? (If "No," explain)		
<input type="checkbox"/> YES <input type="checkbox"/> NO			<input type="checkbox"/> YES <input type="checkbox"/> NO		
14. COST ACCOUNTING STANDARDS BOARD (CASSB) DATA (Public Law 91-379 as amended and FAR PART 30)					
A. WILL THIS CONTRACT ACTION BE SUBJECT TO CASSB REGULATIONS? (If "No," explain in proposal)			B. HAVE YOU SUBMITTED A CASSB DISCLOSURE STATEMENT (CASSB DS-1 or 2)? (If "Yes," specify in proposal the office to which submitted and if determined to be adequate)		
<input type="checkbox"/> YES <input type="checkbox"/> NO			<input type="checkbox"/> YES <input type="checkbox"/> NO		
C. HAVE YOU BEEN NOTIFIED THAT YOU ARE OR MAY BE IN NONCOMPLIANCE WITH YOUR DISCLOSURE STATEMENT OR COST ACCOUNTING STANDARDS? (If "Yes," explain in proposal)			D. IS ANY ASPECT OF THIS PROPOSAL INCONSISTENT WITH YOUR DISCLOSED PRACTICES OR APPLICABLE COST ACCOUNTING STANDARDS? (If "Yes," explain in proposal)		
<input type="checkbox"/> YES <input type="checkbox"/> NO			<input type="checkbox"/> YES <input type="checkbox"/> NO		
<small>This proposal is submitted in response to the solicitation, contract, modification, etc. in Item 1. By submitting this proposal, the offeror, if selected for discussions, grants the contracting officer or an authorized representative the right to examine, at any time before award, any of those books, records, documents, or other records directly pertinent to the information requested or submitted. See instructions at Table 15-3.</small>					
15. NAME AND TITLE (Type)			16. NAME OF FIRM		
17. SIGNATURE				18. DATE OF SUBMISSION	

STANDARD FORM 14XX (REV. 1)
Prescribed by GSA - FAR (48 CFR) 53.215-2(a)